



## COMMUNITY DEVELOPMENT DEPARTMENT

17555 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236  
Website Address: [www.morgan-hill.ca.gov](http://www.morgan-hill.ca.gov)

### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

NOVEMBER 14, 2006

PRESENT: Acevedo, Koepp-Baker, Benich, Escobar, Lyle, Mueller

ABSENT: None

LATE: Davenport

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Linder, Senior Planner (SP) Tolentino, and Minutes Clerk Johnson.

Chair Benich called the meeting to order at 7:01 p.m. and led the flag salute.

#### DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

*Commissioner Davenport arrived at 7:03 p.m. and was seated on the dais.*

#### OPPORTUNITY FOR PUBLIC COMMENT

With none present to address matters not appearing on the agenda, the public hearing was closed.

#### MINUTES:

OCTOBER 24,  
2006

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE OCTOBER 24, 2006 MINUTES WITH THE FOLLOWING REVISIONS:

Page 3, paragraph 6: from the City to ~~Santa Clara County~~ *San Jose greenbelt line.*

Page 8, paragraph 5: Amendment (to motion action): .....THE APPLICANT PRIOR TO THE CITY COUNCIL MEETING.

*It was clarified that staff's amendment of wording was NOT to change the 58 units maximum, nor eliminate the open space area as stated in the prior motion.*

....THE MOTION PASSED WITH THE FOLLOWING....

**PLANNING COMMISSION MEETING MINUTES**

**NOVEMBER 14, 2006**

**PAGE 2**

**Page 10, paragraph 5: (add) CP Bischoff said he did not believe there would be a significant reduction of traffic through the area; *but there could be a traffic reduction of perhaps 5% due to the streets being private.***

**Page 15, paragraph 3: [add] *Commissioner Lyle asked the applicant to evaluate how many fewer units could be built in plan B and still pencil out, since that alternative would have significantly reduced roadway and traffic signal costs.***

**Page 17, paragraph 8: “In the last quarterly report, ~~19 projects were filed, with only five having the final map filed~~ only 5 of 18 projects receiving allotments by 3/01/05, had so far obtained Final Map approval. This is at least 19 months after getting allotments and unacceptably late,” Commissioner Lyle said.**

**Page 19, last paragraph: [add] Commissioner Lyle was generous in praise of the document by Mr. Toy’s department.**

**Pages 20 and 21 [clarification to motion(s)]: MODIFICATION TO EACH OF THE MOTIONS REGARDING THE ACTUAL NUMERICAL VOTE COUNT, e.g., 3-2-1, 4-1-1, ETC.**

**THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: BENICH; ABSENT: NONE.**

**PUBLIC HEARING:**

**1) UPA-95-01: W. THIRD-CINGULAR** A request for a conditional use permit amendment to allow for expanded use to provide cellular services. This project includes collocation of two panel antennas on an existing monopole, approximately 300 ft. of enclosed equipment area, and new monopole with a panel antenna.

PM Rowe presented the staff report and told of the proposed location of the installation of a new monopole with a one-panel antenna. PM Rowe explained that the applicant was unable to properly fulfill the public noticing requirements by placing a project identification and public notice sign on the property that met the timing and duration requirements as required by the Zoning Code. However, he advised, the applicant will pursue fulfilling this requirement for the December 12, 2006 Planning Commission meeting.

Chair Benich opened, then closed, the public hearing as there were no persons present to address the matter.

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE MATTER OF THE USE PERMIT AMENDMENT APPLICATION, UPA-95-01: W. THIRD-CINGULAR TO THE DECEMBER 12, 2006 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

## PLANNING COMMISSION MEETING MINUTES

NOVEMBER 14, 2006

PAGE 3

**2) ZAA-00-14: OAK PARK-GENTILE** A request to amend the precise development plan for a single lot located in the 'El Toro Oaks' Residential Planned Development (RPD) to allow for a balcony addition with French doors within a reduced rear yard and side yard setback. The subject site is 0.07 acres in size and is located at 955 Oak Park Dr. in a R1(7,000)/RPD zoning district.

SP Tolentino explained the applicant is requesting approval to build a second story balcony with French doors at the rear side of his house. The house is in the El Toro Oaks (The Oaks) subdivision which is located on the west side of DeWitt Avenue, 100 ft south of W. Dunne Avenue. SP Tolentino gave the background of the request, and why it was being heard by the Planning Commission. Generally, balconies are considered allowed projections within required yards provided the balconies do not project more than three feet and do not occupy more than 1/3 of the length of the building. The proposed balcony exceeds these provisions. A zoning amendment, she said, is also required because the subject dwelling is located on a reduced size lot with reduced setbacks. SP Tolentino said the balcony encroaches approximately 3 ft into a 15 ft (+/-) rear yard, on a 3,280-sf lot with a zero ft setback on the north side.

SP Tolentino noted that this matter had begun in 2000, when the applicant, Alfonso Gentile, submitted a zoning amendment requesting approval to increase the size of the second story (+490 sq ft) along the front of the building and along the rear at the northeast corner. SP Tolentino said the original design of the second story rear addition extended to the edge of the first story and included a balcony with French doors. At the public hearing for the Planning Commission, a neighbor to the north objected to the second story rear addition, saying it would be an infringement of the private use of her yard; would block solar access; and would create a massive building not in character with the existing neighborhood. The Planning Commission subsequently forwarded a recommendation to the City Council to not allow the second story rear addition.

Continuing, SP Tolentino advised the Commissioners that the City Council, upon hearing Mr. Gentile's offer to eliminate the balcony from the second story addition and replace the French doors with a fixed window recessed approximately two feet (which apparently would have prevented the applicant from looking into the neighbor's yard) approved the second story rear addition with several conditions, including a requirement to eliminate the balcony and replace the French doors with a fixed, recessed window. The building addition was constructed, SP Tolentino said, and finalized by the City Building Division in 2005.

Then in 2006, the applicant was red tagged for undertaking additional construction/renovation work to the home without building permits. SP Tolentino gave a detailed description of the non-permitted work: construction of a patio structure in the rear yard and a second story balcony directly above. The recessed window that had been approved as part of the 2000 zoning amendment application had also been removed (in preparation to install French doors). The balcony is on top of the patio structure and projects out approximately three feet.

SP Tolentino advised that the applicant has since obtained a building permit for the patio structure. However, the balcony requires approval of the zoning amendment. Many in the neighborhood are 'ok' with the proposal. The Oaks HOA Board has approved the balcony plans and 32 of the 44 residents of the subdivision have submitted letters indicating 'no objection' to the proposal. Conversely, Planning Staff

## PLANNING COMMISSION MEETING MINUTES

NOVEMBER 14, 2006

PAGE 4

does have a problem with the zoning amendment and proposed balcony for the following reasons:

- the proposal violates specific conditions of the original RPD amendment approval (and the conditions imposed by the City Council)
- creation of a massive structure on very small lot
- sight access into the neighbor's yard to the north creating privacy issues

SP Tolentino advised that Staff recommends denial of the zoning amendment request. However, should the Commissioners consider approval of the applicant's request, an approval resolution was prepared that includes a condition requiring the applicant to secure all necessary permits for the balcony and any other structures without permits.

Chair Benich opened the public hearing and acknowledged the speakers in alphabetical order (all of whom spoke in favor of the request).

Dolly Crandall 930 Oak Park Drive, told the Commissioners she lives 'across the street' and has viewed the balcony. "I can't see any objections," Ms. Crandall said. "There are a lot of trees and shrubs so the neighbors won't be disturbed."

John Fallowfield, 825 Oak Park Drive, informed he is President of the Oaks Home Owners Association. Mr. Fallowfield said the Gentile's did submit a request (to the HOA Board of Directors) and received approval for the building transformation. Mr. Fallowfield also said the balcony faces DeWitt Avenue, where the parking lot for the Presbyterian Church is located.

Alfonso Gentile, 955 Oak Park Drive, told the Commissioners he felt this hearing to be a continuation of the earlier request which had been approved. Mr. Gentile said he was trying to modify the original project and spoke of 'fears' *of getting approval*, during the 2000/01 public hearings which led him to modify that project to appease the neighbor to the north, and so he had decided to make peace by taking the balcony and French doors away. Now, on the other hand, he had begun to take out the window and use the French doors. Mr. Gentile apologized 'for not getting the required permits'; but told the Commissioners he wanted to complete this final project to his home. Mr. Gentile spoke of other projects 'like this' where recently built structures off Dewitt Avenue have 2<sup>nd</sup> story windows that look down into the neighbor's yard.

Commissioners reminded Mr. Gentile that although the HOA's current ownership may not object to the proposal, it would be fair to think future owners may object.

Commissioner Koepp-Baker said she had not been on the Commission in 2001 and asked if the original building design with the balcony added more usable square footage for the home. Mr. Gentile explained the rear addition was for the master bedroom which they haven't used for five years (due to the construction) and wanted the French doors for aesthetics. Commissioner Koepp-Baker stressed the need to live as neighbors and asked if the applicant was restricted to the required window, "Then what?" Mr. Gentile responded that if the application is denied, he would have to get the framers back and not use the balcony. "This has been a nightmare and somewhat ludicrous," Mr. Gentile declared. Commissioner Koepp-Baker underscored the seriousness of 'movements without permits'.

**PLANNING COMMISSION MEETING MINUTES**

**NOVEMBER 14, 2006**

**PAGE 5**

Commissioner Lyle questioned, "Why did you spend all that money when the conditions of approval specifically denied the very things you have worked on. You may not have agreed but if you did not, not getting permits aggravated the problem." Mr. Gentile said "It was stupidity on my part," he acknowledged. Commissioner Lyle said it was difficult to understand why the applicant obtained a permit for the patio but not for others.

Karen Gentile, 955 Oak Park Drive, said she was part of the 'applicant'. Mrs. Gentile said the original intention when getting a permit (at the City Council level) was to put in the window but not give up the balcony. Mrs. Gentile indicated 'support 'for the 'process' and said, "We would like to have the project. If there is any modification which would let us keep it, we would like that. We would like it if you could modify it and let us keep it."

Edward Knauss, 750 Oak Park Drive, said his wife was on the HOA Board and spoke of the Oaks as a 'development of a 44-home enclave which is very private. Mr. Knauss said, "When the Gentiles asked for support, 'everybody responded positively and enthusiastically'. We live in an area with A, B, C, D model(s) development. Mr. Gentile is trying to make his an A+." Mr. Knauss said he has lived there for five years and 'knows the people respect the design' with the unusual interior. The neighbors, he said, have respect for the competent engineering used. Concluding, Mr. Knauss said, "The neighbors are looking forward to completion of this project which has been going on for some time. There is a strong community sentiment: if this is a trivial change to the rules, let the applicant proceed – and we all strongly back the efforts he is making."

Commissioner Koepp-Baker asked Mr. Knauss if, as a neighboring homeowner, he felt the proposed project would increase or decrease the value of his home. Mr. Knauss said, "Aesthetically, the entire neighborhood agrees to what the applicant has done. This is a plus. Those who are concerned about market value strongly agree with the proposal,"

Delores Parker, 750 Oak Park Drive, HOA Board member and wife of previous speaker, indicated she had toured the area under discussion. Ms. Parker told the Commissioners that what the applicant has done has raised the values of surrounding homes. "I consider this a work of art. It's a masterpiece with an old world look I can't explain. One purchasing the house would be willing to pay twice as much as it is worth," Ms. Parker proclaimed. "What the applicant has struggled to do is amazing." Ms. Parker told the Commissioners they should view the 'masterpiece'.

With no others present to address the matter, the public hearing was closed.

Commissioner Escobar commented that while he appreciated all the neighbors speaking on behalf of the applicants, he hadn't heard that any of them 'would be happy to have the construction next door to me'. Commissioner Escobar further observed that he didn't hear anyone say 'I would like to be able to see the balcony from my back yard'. Continuing, Commissioner Escobar said – responding to the statement that the 'Commissioners should view the masterpiece' – that one could not see a masterpiece until it was completed – and therefore the 'masterpiece' did not exist. Commissioner Escobar advised he lives in a small development and expressed concerns of having a building project next door. "It's one thing to buy and know (of planned construction)

## PLANNING COMMISSION MEETING MINUTES

NOVEMBER 14, 2006

PAGE 6

but to not know, and then have a project created *would not* be fair – nor in most cases, well received,” Commissioner Escobar said. “On top of the other issues, it is unfortunate the applicant proceeded in clear violation and clear conflict (with the Council’s directive) and if a complaint had not been generated resulting in the red tag, Mr. Gentile would have proceeded.” Commissioner Escobar said that a concern was the intention of the applicant when he knew full well that the planned work was not sanctioned by the City.

Commissioner Mueller asked how the current construction had been identified for red tagging. “How was this learned of?” he asked. PM Rowe advised that he was not certain of the exact process, but reminded the project faces DeWitt Ave. and Code Enforcement may have observed the construction during a drive by.

Commissioner Acevedo asked for clarification that the patio structure was permitted. SP Tolentino advised that no permit had been obtained and no effort for obtaining a permit had been made until after the applicant was red tagged.

Commissioner Lyle expressed the thought that staff’s arguments were persuasive and noted the dwelling is located on a 3,200 sq ft lot in a R1(7,000) zone. “I think the City Council gave the applicant a compromise – granting more than the Planning Commission was willing to do, but less than the applicant asked,” he commented.

Chair Benich asked about setbacks on the lot. PM Rowe explained this lot has zero set back allowance on one side, 15 feet at the back yard, and seven feet on the other side.

Commissioner’s discussion followed:

Commissioner Mueller: This was an early RPD; buildings in this unusual neighborhood feature small lots and private streets; it is a unique neighborhood. He also commented it was unfortunate the applicant did not get permits.

Commissioner Lyle: It was known specifically what the applicants were prohibited from doing.

Commissioner Mueller: Agreed the applicant should have known the restrictions. He then argued that perhaps because of the fact that there had not been objections to the work, it might now be permitted.

Commissioner Davenport: Wondered why a Commissioner (question to Mueller) would have voted ‘no’ to previous zoning amendment request but may be amenable to the request now?

Commissioner Mueller: Cited the previous hearing with the neighbor objecting, which he alluded to (may have) influenced his vote at that time. He said, regarding the matter now: “If there are not complaints, it’s not that big of a deal.”

Commissioner Escobar: Called attention to fact that the applicants *did* know – they did not just stumble; they were told specifically that they could not do what they had requested. The applicant gambled and went ahead. They determined that what they did was a gamble and should have known a gamble may be lost. But they deliberately moved ahead, anyway.

Commissioner Mueller: Irrespective of that, the gain must be considered: is the neighborhood better for the project? The applicant had a lifelong dream. If the project is built, where is the damage? The streetscape from Dewitt will be changed with no neighbor objections. The mass will be dramatically altered. Again with no neighborhood objections.

## PLANNING COMMISSION MEETING MINUTES

NOVEMBER 14, 2006

PAGE 7

Commissioner Escobar: Pointed out that the City has:

- taken great pains to protect the neighborhood: no windows that are fully exposed to other's sights and
- gone to great lengths to ensure some degree of privacy however
- the proposed balcony may cause the neighbor to the north to lose sunlight and privacy
- to say the proposal is not adverse on neighbors because issues were not raised become suspect in essence, e.g., if a balcony is built two blocks away it is 'not issue for me'
- if I (the applicant) have a convincing number of relationships with HOA Directors, and harbor the hopes that because of those relationships I can get what I want, then it may not be 'ok' for all the area

Chair Benich said he was struggling with the thought that if the request is approved, what kind of precedent would be opened up to other applicants wanting balconies, especially in smaller lot areas. "I continue to struggle with those issues yet though we've heard from many people that this project is great and wonderful," he said.

**COMMISSIONER LYLE OFFERED A RESOLUTION RECOMMENDING DENIAL OF AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR 955 OAK PARK DRIVE IN THE EL TORO OAKS RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE WEST SIDE OF DeWITT AVENUE, APPROXIMATELY 100 FEET SOUTH OF. W. DUNNE AVENUE. COMMISSIONER ESCOBAR NOTED THE FINDINGS AND CONDITIONS OF THE RESOLUTION AS HE PROVIDED THE SECOND TO THE MOTION. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, ESCOBAR, LYLE; NOES: DAVENPORT, MUELLER; ABSTAIN: NONE; ABSENT: NONE.**

### **3) ZA-06-15: MONTEREY-AZAR**

A request to rezone a 0.93 acre parcel from CO (Administrative Office) to CG (General Commercial) located on the west side of Monterey Road between Spring and Cosmo Avenues. The rezoning is consistent with the City's General Plan and the General Plan Master Environmental Impact Report will be used; no further environmental review is required.

PM Rowe gave the staff report, indicating the proposal is in keeping with the General Plan designation for the area, and approval of this amendment would be 'clean up'. PM Rowe provided insight into the 2001 General Plan Task Force recommendations considered at the public hearings before the City Council and said the applicant requested that the commercial designation be extended further south to include his entire parcel. The Task Force had recommended that the southerly portion of the property now under zoning consideration be designated Non Retail Commercial. PM Rowe reiterated this request for rezone would bring conformation with the General Plan designation of Commercial by was approved by the Council in 2001. He also advised that the amendment is covered under the Master EIR prepared for the General Plan and further that the owner has no immediate plans to develop the site.

Commissioner Acevedo asked about the property to the north, specifically, what the property is zoned for – as it, too, contains a mini market. PM Rowe gave a brief overview of the General Commercial uses and said these were consistent.

**PLANNING COMMISSION MEETING MINUTES**

**NOVEMBER 14, 2006**

**PAGE 8**

Chair Benich opened and then closed the public hearing, as there were no persons present to address the matter.

**COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF ZONING AMENDMENT APPLICATION, ZA-06-02: MONTEREY-AZAR TO AMEND THE ZONING DESIGNATION FROM CO (ADMINISTRATIVE OFFICE) TO CG (GENERAL COMMERCIAL) ON A 0.93-ACRE PARCEL LOCATED ON THE WEST SIDE OF MONTEREY ROAD BETWEEN SPRING AND COSMO AVENUES, INCLUSIVE OF THE FINDINGS AND CONDITIONS CONTAINED THEREIN. COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.**

*Commissioner Acevedo advised that he owns property in the downtown area; and although none of the parcels he owns are within the 500 foot limit for Commission participation, he asked to be excused at 7:47 p.m. to avoid any impression of conflict of interest by participating either in discussion or vote of the upcoming agenda item.*

**4) ZA-06-03: CITY  
OF MH-LIGHT  
COMMERCIAL-  
RESIDENTIAL CL-R  
ZONING TEXT  
AMENDMENT**

A request for approval of an amendment to Chapter 18.04 Definitions and the addition of Chapter 18.25 CL-R, Light Commercial-Residential district to the Morgan Hill Municipal Code. Also, requested is the amendment of the zoning designation on 57 parcels from General Commercial CG, to Light Commercial-Residential CL-R, and 7 parcels from Administrative Office CO, to Light Commercial-Residential, CL-R. The proposed zoning amendments are consistent with the City's General Plan and the General Plan Master Environmental Impact Report will be used, no further EIR or Negative Declaration is required.

SP Linder also reminded that this is the second time (1<sup>st</sup>: July 25, 2006) the Commissioners had seen the proposed zoning text, definition and map amendments. Per the Commission's request a workshop was held on October 10 with speakers from the public participating. At the workshop a suggestion made that a percentage of a building be allowed to contain retail as a permitted use (or as a conditional use) with a modified use permit process approvable by the Community Development Director. She advised that no specific comments were made about the proposed text other than the Commission's consensus that the title 'Restricted Retail Commercial' provided a negative connotation. Consequently, staff has proposed the new title: 'Light Commercial-Residential'

SP Linder turned to page 3 of the staff report, noting the list of 20 proposed permitted uses and 17 proposed conditional uses. She also spoke on the facets of the uses. SP Linder provided an overview of the process which had been undertaken in developing the proposed list of permitted and conditional uses:

- Need for development of an extensive list for non retail use. Primarily permitted uses that where service oriented in nature but also may have retail component, e.g., a salon where the operators would cut hair and sell beauty products.
- Retailers who deal with 'bulky items'
- low traffic generating business (specialty store; furniture store - where mostly lower trips are generated)

## PLANNING COMMISSION MEETING MINUTES

NOVEMBER 14, 2006

PAGE 9

- mixed land use
- straight retail uses would not be permitted (drugstore, shoe store, etc.) because they would be inconsistent with the general plan policy

SP Linder explained that the list of 17 conditional uses were derived from uses that may have a negative affect on neighboring properties, SP Linder said, noting also the inclusion of residential use within the district will create a different level of sensitivity to some uses.

Commissioner Escobar questioned why intensive retail was included as a permitted use since it was inconsistent with the General Plan policy. SP Linder clarified that the proposed text included extensive retail as a permitted use. SP Linder continued by reporting on the proposed design standards within the CL-R text. She mentioned that the General Plan already defines lot coverage, minimum lot size and maximum building height. SP Linder made the following points regarding the proposed development standards:

- Residential mixed use projects will require a PUD is adding/creation more than one unit.
- Density would be similar to the CC-R district 8 – 18 dwelling units per acre
- Design standards being very similar to the CC-R zoning with the exception of the front set back of 15 ft setback(s) rather than 0 ft. to create feathering to the development within the downtown.

PM Rowe advised the City Council's Community and Economic Development Subcommittee has included in their work plan a look at the General Plan to reevaluate existing policies which may be Economic Inhibitors. In the interim, PM Rowe said, from a community standpoint it was necessary to give some zoning standards to non-retail because that matter had been in limbo for the past five years. "We tried to come up with lots of flexibility, but must keep with the adopted General Plan," PM Rowe advised.

Chair Benich referenced item 9 (conditional uses): lodging. "Do we have too much emphasis on lodging? Lodging has been included as a conditional use and several of the properties designated as Non Retail commercial are currently developed with lodging.

SP Linder explained that once staff generated a list of uses, they looked at the existing zoning definitions and identified the need to amend Chapter 18.04 of the Municipal Code.

SP Linder spoke about the proposed amendment to the zoning designations on 57 parcels from General Commercial (GC) to Light Commercial Residential (CL-R) and seven parcels from Administrative Office (CO) to Light commercial Residential district (CL-R) 64 properties from general commercial. SP Linder stressed the properties proposed for rezoning are only the sixty-four parcels delineated as Non-Retail Commercial within the General Plan.

Lastly, SP Linder reviewed the minor text revisions proposed within a handout. Such revisions included:

- Addition of swimming pools and tennis courts to the outdoor recreation

**PLANNING COMMISSION MEETING MINUTES**

**NOVEMBER 14, 2006**

**PAGE 10**

definition.

- Fence/wall and landscape buffer requirement for parking area proposed adjacent to existing residential uses.
- Add music and dance to the proposed theater definition

Commissioner Koepp-Baker recalled that in July the Commissioners had received a letter from a local family asking how smaller parcels would be treated under this change. SP Linder said the actions under consideration at this meeting should clear up some of the confusion and frustration that the small lots have experienced in not knowing the zoning or development standards. SP Linder responded that the 50 percent lot coverage is achievable unless the lot width is less than 50 ft. and is located on a corner and would have to incorporate a greater side yard setback. One such property exists at the corner of Monterey and Bisceglia. This property would not be able to maximize the coverage allowed per the proposed zoning due to the 15-foot corner side yard setback requirement. .

Commissioner Mueller asked about 18.04.075 (page 12) of the definitions. PM Rowe responded, saying if the property is under contract, it is considered 'under use'. Commissioner Koepp-Baker clarified that the property could be documented as leased, the requirement would be met. PM Rowe advised the City Attorney had reviewed this section. Chair Benich said he felt this section is more akin to abandonment.

Commissioner Mueller clarified that if a property sits vacant, but is subsequently leased, the non-conforming use would still be in effect. Responding to Chair Benich, Commissioner Mueller said he felt it would be difficult to prove abandonment of property in the downtown area.

Chair Benich opened the public hearing. With none present to speak to the matter, the public hearing was closed.

**COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING AMENDMENT TO TITLE 18, THE ZONING CODE BY ADDING CHAPTER 18.25 CL-R, LIGHT COMMERCIAL-RESIDENTIAL ZONING DISTRICT, INCLUSIVE OF THE FINDINGS AND CONDITIONS CONTAINED WITHIN. COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; ACEVEDO WAS ABSENT.**

**COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING AMENDMENT TO CHAPTER 18.04, DEFINITIONS OF THE MORGAN HILL MUNICIPAL CODE. NOTING THE FINDINGS AND CONDITIONS OF THE RESOLUTION, COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED WITH THE FOLLOWING VOTE: AYES: KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO.**

**COMMISSIONER MUELLER OFFERED THE RESOLUTION RECOMMENDING APPROVAL OF AMENDING THE ZONING DESIGNATION FROM CO - ADMINISTRATIVE OFFICE, TO CL-R – LIGHT COMMERCIAL-RESIDENTIAL ON SEVEN (7) PARCELS TOTALING 8.82**

**PLANNING COMMISSION MEETING MINUTES**

**NOVEMBER 14, 2006**

**PAGE 11**

**ACRES (APNs 726-24-018, 767-17-046 & 047, 817-02-036, 037 & 051) AND AMENDING THE ZONING DESIGNATION FROM CG GENERAL COMMERCIAL TO CL-R LIGHT COMMERCIAL-RESIDENTIAL ON FIFTY SEVEN PARCELS TOTALING 343.34 ACRES (APNs 726-24-013 THROUGH 017, AS WELL AS 021; 764-13-020, 022 THROUGH 025, THEN 044 THROUGH 049; 766-25-001, 002, 004, 005; 767-18-002, 005, 019, 020, 021, 027, 031, 032, 035, 036, 046, & 050; 817-01-002 THROUGH 007; 817-03-002 THROUGH 010, 050 & 054), LOCATED ON THE EAST AND WEST SIDES OF MONTEREY ROAD, SOUTH OF BISCEGLIA AVENUE, AND NORTH OF WEST EDMUNDSON AVENUE, AND ON THE EAST AND WEST SIDES OF MONTEREY ROAD, NORTH OF CENTRAL AVENUE, AND SOUTH OF THE RAILROAD CROSSING, AND INCLUDING THE FINDINGS AND CONDITIONS CONTAINED WITHIN. COMMISSIONER ESCOBAR NOTED THE INCLUSION OF EXHIBITS A AND B AS HE SECONDED THE MOTION. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO.**

Reminder that the November 28 and December 26 Planning Commission meetings had been cancelled.

**ANNOUNCEMENTS:** PM Rowe reported on the City Council meetings:

November 1: The City Council adopted numerous Ordinances, including the zoning amendment to establish a zoning overlay, as well as introducing amendments as recommended by the Planning Commission, together with an Ordinance for performance measures. The Zoning Amendment application, ZAA-05-11: Downtown Zoning Amendments were adopted, as was the Zoning Amendment application, ZAA-06-12, which identifies the exceptions and modifications of the text amendments.

November 8 (Special Meeting): The Council voted an amendment and extension to the Redevelopment Plan, with the exclusion of some portions, e.g., business parks. This action, PM Rowe reported, will return \$800,000 to the City's General Fund. Additionally, PM Rowe said that the Council did not take action which would have given the Redevelopment Agency power or authority of eminent domain.

Commissioner Mueller asked if there was change adopted regarding the development agreements. PM Rowe responded that, in terms of the schedule issue, this will be taken to the City Council at a later date.

Chair Benich announced he had spoken to PM Rowe about the letter to CalTrans (re: the fence requirement) authorized by the Commission and said a response had been received. The correspondence indicated that the matter is to be 'under review'. The Commissioners agreed with the Chair that staff should 'wait and see' if there were further developments within a reasonable period of time before further action would be instigated. All Commissioners present (Acevedo was absent) expressed concern of the need to 'push the matter or there would be chain link fences all over the place'.

Commissioner Mueller cited the DiNapoli project as a concern, with having a response from CalTrans timely, with a possible follow-up letter from the City .

**PLANNING COMMISSION MEETING MINUTES**

**NOVEMBER 14, 2006**

**PAGE 12**

Commissioner Mueller commented that he thought it was against City Code to do construction on Sunday. PM Rowe said, "Yes it is: Sundays and federal holidays, unless an emergency is declared or authorized by the Chief Building Official." The Commissioners noted that this section of the Code has recently been violated by contractors working on a commercial enterprise.

**ADJOURNMENT:**

Noting that there was no further business to come before the Commissioners at this meeting, Chair Benich adjourned the meeting at 8:30 p.m., by wishing all a very happy Thanksgiving.

**MINUTES PREPARED BY:**

---

**JUDI H. JOHNSON, Minutes Clerk**